

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Resolution ALJ 176-3069  
Administrative Law Judge Division  
August 23, 2001

**R E S O L U T I O N**

RESOLUTION ALJ 176-3069. Ratification of preliminary determinations of category for proceedings initiated by application. The preliminary determinations are pursuant to Article 2.5, Rules 4, and 6.1 of the Commission's Rules of Practice and Procedure. (See also Rule 63.2(c) regarding notice of assignment.)

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The Commission's rules and procedures which implement the requirements of Senate Bill (SB) 960 (Leonard, ch. 96-0856) are, for the most part, found in Article 2.5 of our Rules of Practice and Procedure. The rules and procedures were adopted by the Commission in D.97-11-021, which describes more fully the background to the development of these rules. Rule 4 describes the formal proceedings to which the SB 960 rules (Article 2.5) apply. Rule 6.1 requires the Commission to preliminarily determine a proceeding's category, whether the proceeding requires a hearing, and designate an Assigned Commissioner and Administrative Law Judge. Rule 6.1(a) states that the preliminary determination of category is not appealable but shall be confirmed or changed by Assigned Commissioner's ruling. Unless and until a preliminary determination is changed by such ruling, the preliminary determination of category governs the applicability of the other reforms that SB 960 requires. Rule 63.2 provides for petitioning the Commission to reassign a proceeding to another administrative law judge. Rule 63.2(c) establishes the time for filing such a petition. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

**The Categories**

SB 960 makes sweeping changes in many aspects of the Commission's practices in an effort to improve the quality and timeliness of Commission decision making. It creates three categories of proceedings: adjudicatory, ratesetting, and quasi-legislative. The applicability of many of the changes it requires depends upon the category assigned to

the proceeding. For example, the ex parte rules which apply differ if the proceeding is categorized as adjudicatory rather than quasi-legislative. The Legislature defined each of these procedural categories in Section 7 of SB 960. Consistent with these definitions, the rules provide that:

“‘Adjudicatory’ proceedings are: (1) enforcement investigations into possible violations of any provision of statutory law or order or rule of the Commission; and (2) complaints against regulated entities, including those complaints that challenge the accuracy of a bill, but excluding those complaints that challenge the reasonableness of rates or charges, past, present, or future.

“‘Ratesetting’ proceedings are proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities). ‘Ratesetting’ proceedings include complaints that challenge the reasonableness of rates or charges, past, present, or future. For purposes of this Article, other proceedings may be categorized as ratesetting as described in Rule 6.1(c).

“‘Quasi-legislative’ proceedings are proceedings that establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry.” (Rules 5(b), 5(c), and 5(d).)

### **Mixed or Unclear Category Proceedings**

For a proceeding that may fall into more than one category, the rules allow parties to recommend that the Commission pick the most suitable category, or to recommend dividing the subject matter of the proceeding into different phases or one or more new proceedings, each with its own category. The rules provide that a proceeding that does not clearly fit into *any* of SB 960’s defined categories will be conducted under the rules applicable to the ratesetting category. As such a proceeding matures, the Commission may determine that the rules applicable to one of the other categories, or some hybrid of those rules, would be better suited to the proceeding.

As stated in D.97-06-071, ratesetting proceedings typically involve a mix of policymaking and factfinding relating to a particular public utility. Because proceedings that do not clearly fall within the adjudicatory or quasi-legislative categories likewise typically involve a mix of policymaking and factfinding, the ratesetting procedures are, in general, preferable for those proceedings.

## **Next Steps**

As stated above, this preliminary determination of category is not appealable. Once interested parties have had an opportunity to respond to the initiating party's proposed category, the preliminary determination shall be confirmed or changed by Assigned Commissioner's Ruling pursuant to Rule 6(a)(3). This Assigned Commissioner Ruling may be appealed to the full Commission pursuant to Rule 6.4(a). Parties have 10 days after the ruling is mailed to appeal. Responses to the appeal are allowed under Rule 6.4(b), and must be filed and served not later than 15 days after the ruling is mailed. The full Commission will consider the appeal.

Any party, or person or entity declaring an intention to become a party is entitled to petition for reassignment of the proceeding to another Administrative Law Judge, as described in Rule 63.2. Such a petition must be filed no later than 10 days after notice of the assignment. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

## **Conclusion**

The Commission has reviewed the initial pleading of the utility applicants listed in the attached schedule and has made a preliminary determination of category and need for hearing, consistent with the requirements and definitions of Article 2.5 of its rules.

**IT IS ORDERED** that each proceeding listed in the attached schedule is preliminarily categorized, and the need for a hearing is noted.

ALJ/hkr

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on August 23, 2001, the following Commissioners voting favorably thereon:

/s/ WESLEY M. FRANKLIN

WESLEY M. FRANKLIN  
Executive Director

LORETTA M. LYNCH  
President  
HENRY M. DUQUE  
RICHARD A. BILAS  
CARL W. WOOD  
GEOFFREY F. BROWN  
Commissioners

**PRELIMINARY DETERMINATION  
SCHEDULE**

Resolution ALJ 176-3069 (08/23/01)

<b>NUMBER TITLE</b>	<b>PROPOSED CATEGORY</b>	<b>PRELIM. CATEGORY</b>	<b>HEARING</b>
<b>A01-07-040</b> NTERA, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
<b>A01-07-041</b> NEWWAVE COMMUNICATIONS, INC., for a Certificate of Public Convenience and Necessity to Provide Local Exchange and Interexchange Telecommunications Services on a Resale Basis in the State of California	Ratesetting	Ratesetting	NO
<b>A01-08-001</b> CITY OF OCEANSIDE, for an Order authorizing construction of a private crossing, used by the public, on private property, at separated grades. The crossing connects privately held land located off Oceanside Boulevard between El Camino Real and Rancho Del Oro Drive. The crossing occurs on the Oceanside-Escondido Light Rail Project	Ratesetting	Ratesetting	NO
<b>A01-08-004</b> POLY-TAINER, INC., for modification of Resolution E-3707	Ratesetting	Ratesetting	YES
<b>A01-08-005</b> ANEW TELECOMMUNICATIONS CORPORATION, dba CALL AMERICA, for a Certificate of Public Convenience and Necessity to Provide Facilities-Based and Resold Local Exchange and Interexchange Services within California	Ratesetting	Ratesetting	NO

**PRELIMINARY DETERMINATION  
SCHEDULE**

Resolution ALJ 176-3069 (08/23/01)

<b>NUMBER TITLE</b>	<b>PROPOSED CATEGORY</b>	<b>PRELIM. CATEGORY</b>	<b>HEARING</b>
<b>A01-08-007</b> ADVANCED TEL, INC., TLX COMMUNICATIONS, INC., for approval of a stock purchase agreement and related transactions	Ratesetting	Ratesetting	NO
<b>A01-08-008</b> COUNTY OF ALAMEDA, for an order to construct a grade crossing on Pleasanton - Sunol Road, County of Alameda (PUC No. D-38.1C)	Ratesetting	Ratesetting	NO
<b>A01-08-009</b> COUNTY OF ALAMEDA, to reinstall a former Southern Pacific grade crossing at Pleasanton - Sunol Road, County of Alameda (PUC No. D-38.3)	Ratesetting	Ratesetting	NO
<b>A01-08-010</b> HRZ COMMUNICATIONS, INC., for a certificate of public convenience and necessity to provide limited facilities-based and resold local exchange service and facilities-based and resold interexchange telecommunications services	Ratesetting	Ratesetting	NO
<b>A01-08-012</b> SOUTHWEST GAS CORPORATION, (U 905 G), for authority (i) to issue one or more types of debt securities in the principal amount of up to Five Hundred Fifty Million and No/100 (\$550,000,000.) Dollars; (ii) to refinance previously issued short-term debt securities; and (iii) to enter into one or more interest rate risk management contracts	Ratesetting	Ratesetting	NO
<b>A01-08-015</b> RHYTHMS LINKS INC., (U 5813 C), to Withdraw from the Provision of Competitive Local Exchange and Interexchange Services	Ratesetting	Ratesetting	NO

**PRELIMINARY DETERMINATION  
SCHEDULE**

Resolution ALJ 176-3069 (08/23/01)

<b>NUMBER TITLE</b>	<b>PROPOSED CATEGORY</b>	<b>PRELIM. CATEGORY</b>	<b>HEARING</b>
<b>A01-08-016</b> CITYOF PLACENTIA, requesting approval of the installation of quad gates with pre signals and other crossing enhancements within Kellogg Drive, CPUC Crossing No. 2B-39.20 and Placentia Avenue, CPUC Crossing No. 2B-43.6, a distance of 4.4 miles	Ratesetting	Ratesetting	NO
<b>A01-08-017</b> RANDHAWA, RAJINDER S., dba AMERICAN SHUTTLE EXPRESS, for authority to extend the areas of Operation of its Passenger Stage Operations from Points in Santa Clara, San Mateo, Alameda and San Joaquin Counties to points in Solano County, Contra Costa County, Marin County, and the City and County of San Francisco, to the San Jose, Oakland and San Francisco International Airports	Ratesetting	Ratesetting	NO
<b>A01-08-020</b> SOUTHERN CALIFORNIA WATER COMPANY, for Authority to Increase Rates for Electric Service in the Bear Valley Electric Customer Service Area	Ratesetting	Ratesetting	YES
<b>A01-08-021</b> YAK COMMUNICATIONS (AMERICA) INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013 (Filer Address: 55 Town Centre Court, Suite 610, Scarborough, Ontario, M1P 4X4, Canada)	NDIEC Registration Application	Ratesetting	NO

**PRELIMINARY DETERMINATION  
SCHEDULE**

Resolution ALJ 176-3069 (08/23/01)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
<b>A01-08-023</b> KMC DATA, LLC, for a Certificate of Public Convenience and Necessity to Provide Competitive Local Exchange Services on a Combined Resale and Limited Facilities Basis and Resold Interexchange Service in the State of California	Ratesetting	Ratesetting	NO

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